Filed 7/9/12 Bonny Doon Volunteer Fire/Rescue v. Santa Cruz County Local Agency Formation Commission CA6

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

BONNY DOON VOLUNTEER FIRE/RESCUE, INC. , Plaintiff and Appellant, v. SANTA CRUZ COUNTY LOCAL AGENCY FORMATION COMMISSION, Defendant and Respondent.	H036492 (Santa Cruz County Super. Ct. No. CV162743)

An application proposing the formation of the Bonny Doon Fire Protection District ("FPD") and detachment of the Bonny Doon area from the County Service Area 48 ("CSA 48") came before the Local Agency Formation Commission of Santa Cruz County ("LAFCO"), which disapproved it by formal resolution. Bonny Doon Volunteer Fire/Rescue, Inc., a California non-profit public benefit corporation and the proponent of the application, unsuccessfully sought a writ of mandate compelling LAFCO to (1) set aside Resolution No. 913 disapproving the proposal, (2) comply with the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 ("the Act") (Gov. Code, § 56000 et seq.)[1] and the Fire Protection District Law of 1987 ("Fire Protection District

[1] All further references are to the Government Code unless otherwise stated.

Law") (Health & Saf. Code, § 13800 et seq.), and (3) adopt a new resolution supported by substantial evidence. It now appeals the superior court's denial of its writ petition.

Appellant argues that LAFCO's Resolution No. 913 is not supported by substantial evidence and LAFCO prejudicially abused its discretion by failing proceed in the manner required by the Act and applicable law. Our thorough review of the record does not show that appellant is entitled to writ relief. Accordingly, we affirm.

I

Procedural Background

A. *Administrative Proceedings*

1. *Proposed Fire Protection District*

In October 2006, LAFCO received a proposal application for formation of a Bonny Doon Fire Protection District and concurrent detachment of the new service territory from CSA 48, which funds the Santa Cruz County Fire Department ("County Fire"), from appellant. This application is referred to as Application No. 913.

A registered voter petition for formation of a new Bonny Doon Fire Protection District was also filed with LAFCO's Executive Officer Patrick McCormick and then certified by the elections official of Santa Cruz County ("County") in December 2006. The petition stated: "District formation will significantly improve fire and medical emergency services to the Bonny Doon community" by eliminating dispatch delays, improving response time, designing training to "better accommodate volunteer schedules and improve recruitment and retention," and supplementing volunteer efforts with "some paid staffing, stipends, paid call, etc."

Appellant's emergency services plan, dated January 15, 2007 and submitted to LAFCO, laid out the details of the proposed district's governance and management, administration, facilities, apparatus, and equipment, service delivery strategy, and other aspects of its operation.

2. *Executive Officer's Report*

Executive Officer McCormick reviewed Application No. 913 and prepared a report that included his recommendations to LAFCO for a September 22, 2008 public hearing on the application. This Executive Officer's Report, dated September 8, 2008, described the proposed reorganization, the existing fire protection and emergency services, evaluated the proposal, and recommended that LAFCO disapprove it. Numerous attachments accompanied the report.

Among other things, the report explained the provision of current services: "Fire protection and first response to emergencies in Bonny Doon is the responsibility of CAL FIRE (the California Department of Forestry and Fire Protection). Under State law, CAL FIRE is stationed in the County during the fire season to provide wildland fire protection. In addition, CAL FIRE provides structural fire and emergency responses year round on contracts with the County of Santa Cruz. This contract arrangement has existed since 1948, and is known as the Santa Cruz County Fire Department, or simply as 'County Fire.' County Service Area 48 coincides with the County Fire service area. County Service Area 48 funds the County Fire contracts through property taxes and fire suppression assessments collected within the County Services Area 48. The contract covers the 286 square miles of Santa Cruz County outside cities, fire protection districts, and County Service Area 4 (Pajaro Dunes), which has its own contract with CAL FIRE."[2]

"The State of California provides wildland fire suppression to areas that meet its criteria for 'State Responsibility Area.' " The County "contracts with CAL FIRE to respond to emergencies both during the fire season and outside the fire season." That response includes "paid CAL FIRE companies and volunteers who are trained and supported by CAL FIRE." They support the five volunteer companies, including the

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[2] LAFCO's 2005 Countywide Service Review states: "The Santa Cruz County Fire Department serves the unincorporated area of Santa Cruz County outside the boundaries of the other fire protection districts."

Bonny Doon Fire and Rescue, which had a roster of 19 volunteers. The County's contract with CAL FIRE covered four year-round CAL FIRE stations in the County and four seasonal CAL FIRE stations, including one in Felton.

"Fire protection and emergency response in Bonny Doon is currently provided by a combined response of volunteers, CAL FIRE/County Fire paid companies, and mutual aid from nearby fire agencies." "Fire protection and emergency response in Bonny Doon is currently funded by State and County Service Area 48 (County Fire) funds."

The proposed Bonny Doon FPD would encompass a 49 square mile area. "The subject territory is within the Sphere of Influence that LAFCO has adopted for County Service Area 48 (County Fire)" and the proposal would exclude that area from CSA 48's sphere of influence. "The proposal area generally coincides with the response area into which the Bonny Doon volunteers currently provide initial emergency response."

In Bonny Doon, there are two all-volunteer stations, both owned by the County, but no CAL FIRE stations. "The volunteers are trained, insured, and dispatched by CAL FIRE/County Fire." "Under the current CAL FIRE/County Fire operational plan, [Bonny Doon firefighter] volunteers sleep at their homes each night and respond to pages." The proposal contemplated around-the-clock staffing of the McDermott Station utilizing a combination of paid firefighters, who would be paid "significantly below market rate," and volunteers or interns called "sleepers."

The application "proposed purchasing from the County the vehicles, equipment, and two fire stations that are now used to serve Bonny Doon" for a purchase price of one dollar. In an October 30, 2006 letter to Executive Officer McCormick attached to the report, appellant argues that, in conjunction with formation of the proposed district, Santa Cruz County should transfer two fire station properties, the station on Martin Road and the McDermott Station and residence on Empire Grade Road, and four County-owned vehicles to the new district for a nominal cost of one dollar each.

When a 911 call is received by a Santa Cruz Consolidated Emergency Communications Center (SCCECC) dispatcher, the dispatcher sends "an alphanumeric pre-alert page" for a County Fire/CAL FIRE incident. The dispatcher then transfers the call to the CAL FIRE dispatcher, who makes the formal radio dispatch and dispatches the nearest paid company, which proceeds to the incident.

In the summer of 2008, there were four major wildfires in Santa Cruz County, including the Martin fire in Boony Doon. CAL FIRE failed to dispatch the Bonny Doon volunteers to the Martin fire. The County's investigation found that the SCCECC did properly pre-alert the Bonny Doon volunteers, those volunteers did respond in substantially the same time frame and numbers as they would have if "CAL FIRE had properly completed the radio dispatch," and "[t]he CAL FIRE dispatch center was aware that the Bonny Doon Volunteers were responding to the Martin Fire based on the Volunteers' radio reports that they were in route."

Two ameliorative steps were taken in response to Martin Fire dispatch failure. CAL FIRE changed their dispatch procedures to reduce the likelihood of future error. In addition, the County had "formed a task force to report on the feasibility of the [SCCECC] directly dispatching all CAL FIRE/County Fire volunteer companies."

3. *Hearing on the Proposal*

On September 22, 2008, a public hearing was held on Application No. 913. At the end of the hearing, LAFCO's commissioners passed, by a roll call vote of four to three, a motion to follow the staff recommendation to disapprove the application. LAFCO adjourned to its next regularly scheduled meeting on October 1, 2008.

On October 1, 2008, the matter of a resolution implementing disapproval of the proposed reorganization was continued until November 5, 2008.

4. *Resolution No. 913*

By Resolution No. 913, adopted November 5, 2008, LAFCO disapproved the proposal for formation of the Bonny Doon Fire Protection District and detachment of the

Bonny Doon area from CSA 48. LAFCO explicitly stated in the resolution's recitals that it had "carefully considered" the Executive Officer's Report, all factors required by section 56668, the Initial Study and Negative Declaration, and "all written and oral testimony that was submitted by interested members of the affected communities."

5. *Request for Reconsideration*

Appellant submitted a written request to LAFCO to reconsider Resolution No. 913. Executive Officer McCormick provided a staff report and recommendation on the request. The report indicated that LAFCO legal counsel was providing a separate analysis of the legal issues raised. As to the factual issues, the report states that "Bonny Doon proponents in their reconsideration materials have not presented any new or different facts generally, nor any relevant facts that could not have been presented at the September 22, 2008 hearing." It was recommended that the Commission disapprove the reconsideration request.

6. *Reconsideration*

A reconsideration hearing was held on December 8, 2008. A motion to deny reconsideration, consistent with the staff recommendation, passed.

B. *Proceedings in the Superior Court*

Appellant filed its petition for writ of mandate pursuant to Code of Civil Procedure section 1085 on February 9, 2009. On June 11, 2010, it filed a first amended petition pursuant to Code of Civil Procedure section 1085.

At a hearing on October 4, 2010, the court announced its tentative decision denying the writ petition. After further argument, the court indicated that it was adopting its tentative ruling and directed County Counsel to prepare a statement of decision.

The court's statement of decision denying the writ petition and the court's judgment in favor of LAFCO were filed November 16, 2010.

II

Legal Background

The goal of the Act is "to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state." (§ 56001.) "To effectuate this purpose, each county has a [local agency formation commission] that is charged with reviewing and approving or disapproving proposals for changes of organization. (§§ 56325, 56375.) Through this process, the [commission] strives to facilitate the logical and reasonable development of cities, counties and districts in order to provide for the present and future needs of each county and its communities. (§§ 56054, 56301.)" (*County of Fresno v. Malaga County Water Dist.* (2002) 100 Cal.App.4th 937, 942.)

Under the Act, "[a] proposal for a change of organization or a reorganization may be made by petition." (§ 56700, subd. (a); see 56650.) As statutorily defined, a "change of organization" includes a district formation (§ 56021, subd. (b)) and a detachment from a district (§ 56021, subd. (c)). The statutory definition of "detachment" includes the removal of territory from a district. (§ 56033.) At all relevant times in this case, " '[r]eorganization' mean[t] two or more changes of organization initiated in a single proposal." (Stats. 1985, ch. 541, § 3, p. 1929; see § 56073.)

A local agency formation commission ("commission") has the power and duty to "review and approve with or without amendment, wholly, partially, or conditionally, or disapprove proposals for changes of organization or reorganization, consistent with written policies, procedures, and guidelines adopted by the commission." (§ 56375, subd. (a)(1).) Such determinations must be "consistent with the spheres of influence of the local agencies affected by those determinations." (§ 56375.5.) Under the Act, "sphere of influence" "means a plan for the probable physical boundaries and service area of a local agency, as determined by the commission." (§ 56076.)

Under the general provisions governing consideration of a proposed change of organization or reorganization, a commission's executive officer must "review each application which is filed with the executive officer" and "prepare a report, including his or her recommendations, on the application."[3] (§ 56665.) A commission must generally hold a public hearing regarding a proposed reorganization. (§§ 56662, subd. (b), 56666, subd. (a); see § 56662, subd. (a) [exception for proposal consisting solely of annexations or detachments or both].) At the hearing, the commission must "hear and receive any oral or written protests, objections, or evidence" and "consider the report of the executive officer." (§ 56666, subd. (b).) The Act mandates the consideration of a number of statutory factors but the list is not exclusive.[4] (§ 56668.)

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[3] A commission must "appoint an executive officer who shall conduct and perform the day-to-day business of the commission." (§ 56384, subd. (a).)

[4] As it read in 2008, section 56668 provided: "Factors to be considered in the review of a proposal shall include, but not be limited to, all of the following: [¶] (a) Population and population density; land area and land use; per capita assessed valuation; topography, natural boundaries, and drainage basins; proximity to other populated areas; the likelihood of significant growth in the area, and in adjacent incorporated and unincorporated areas, during the next 10 years. [¶] (b) The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed incorporation, formation, annexation, or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and adjacent areas. [¶] 'Services,' as used in this subdivision, refers to governmental services whether or not the services are services which would be provided by local agencies subject to this division, and includes the public facilities necessary to provide those services. [¶] (c) The effect of the proposed action and of alternative actions, on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county. [¶] (d) The conformity of both the proposal and its anticipated effects with both the adopted commission policies on providing planned, orderly, efficient patterns of urban development, and the policies and priorities set forth in Section 56377. [¶] (e) The effect of the proposal on maintaining the physical and economic integrity of agricultural lands, as defined by Section 56016. [¶] (f) The definiteness and certainty of the boundaries of the territory, the nonconformance of proposed boundaries with lines of assessment or ownership, the creation of islands or corridors of unincorporated territory, and other similar matters affecting the proposed boundaries. [¶] (g) A regional

"At any time not later than 35 days after the conclusion of the hearing, the commission shall adopt a resolution making determinations approving or disapproving the proposal, with or without conditions . . . ." (§ 56880.) "If the commission disapproves the proposal . . . , no further proceedings shall be taken" on it. (§ 56880, see § 56884, subd. (a).)

A written request for reconsideration of a resolution may be filed within 30 days of the adoption of a resolution. (§ 56895, subds. (a), (b).) The request is required to state "the specific modification to the resolution being requested" and "what new or different facts that could not have been presented previously are claimed to warrant the reconsideration." (§ 56895, subd. (a).) The request must be placed on the agenda of the next meeting of the commission for which notice can be given as required (§ 56895, subd. (e)) and, at that meeting, the commission must consider the request and receive oral and written testimony. (§ 56895, subd. (f).) "At the conclusion of its consideration, the commission may approve or disapprove with or without amendment, wholly, partially or

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transportation plan adopted pursuant to Section 65080, and consistency with city or county general and specific plans. [¶] (h) The sphere of influence of any local agency which may be applicable to the proposal being reviewed. [¶] (i) The comments of any affected local agency or other public agency. [¶] (j) The ability of the newly formed or receiving entity to provide the services which are the subject of the application to the area, including the sufficiency of revenues for those services following the proposed boundary change. [¶] (k) Timely availability of water supplies adequate for projected needs as specified in Section 65352.5. [¶] (*l*) The extent to which the proposal will affect a city or cities and the county in achieving their respective fair shares of the regional housing needs as determined by the appropriate council of governments consistent with Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7. [¶] (m) Any information or comments from the landowner or owners, voters, or residents of the affected territory. [¶] (n) Any information relating to existing land use designations. [¶] (o) The extent to which the proposal will promote environmental justice. As used in this subdivision, 'environmental justice' means the fair treatment of people of all races, cultures, and incomes with respect to the location of public facilities and the provision of public services." (Stats. 2007, ch. 428, § 1, pp. 3705-3706.) This section was amended in 2009 (Stats. 2009, ch. 570, § 1, pp. 2903-2904) and nonsubstantive changes were made in 2010 (Stats. 2010, ch. 328, § 93, pp. 1521-1522).

conditionally the request." (§ 56895, subd. (g).) "The determinations of the commission shall be final and conclusive." (§ 56895, subd. (h).)

III

Judicial Review

A petition for traditional mandamus is appropriate when the challenged action is quasi-legislative. (See *Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 567.) "Courts have traditionally held that quasi-legislative actions must be challenged in traditional mandamus proceedings rather than in administrative mandamus proceedings even if the administrative agency was required by law to conduct a hearing and take evidence. (See *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 278–279 . . . ; *Shapell Industries, Inc. v. Governing Board* (1991) 1 Cal.App.4th 218, 231 . . . ; *Wilson v. Hidden Valley Mun. Water Dist.* (1967) 256 Cal.App.2d 271, 279 . . . .)" (*Ibid.*)

"The classification of administrative action as quasi-legislative or quasi-adjudicative 'contemplates the function performed . . . .' (*Pitts v. Perluss* (1962) 58 Cal.2d 824, 834 . . . .)" (*20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 275.) In deciding whether to approve a proposal for formation of a new fire protection district and detachment of territory from a county service area, a local agency formation commission acts in its quasi-legislative capacity. (See *Sierra Club v. San Joaquin Local Agency Formation Com.* (1999) 21 Cal.4th 489, 495 ["A LAFCO annexation determination is quasi-legislative; judicial review thus arises under the ordinary mandamus provisions of Code of Civil Procedure section 1085, rather than the administrative mandamus provisions of Code of Civil Procedure section 1094.5. [Citation.]"]; *San Miguel Consolidated Fire Protection Dist. v. Davis* (1994) 25 Cal.App.4th 134, 152 [LAFCO is a quasi-legislative administrative agency; its proceedings are quasi-legislative in nature]; *City of South Gate v. Los Angeles Unified School Dist.* (1986) 184 Cal.App.3d 1416, 1421 [district's boundary adjustment between high schools was quasi-legislative]; *Fullerton Joint Union High School Dist. v. State Bd.*

of Education (1982) 32 Cal.3d 779, 786-787 (plur. opn. of Broussard, J.), disapproved on another ground in *Board of Supervisors v. Local Agency Formation Com.* (1992) 3 Cal.4th 903, 917-922 [State Board of Education was exercising a quasi-legislative function reviewable by traditional mandamus when it approved a plan to remove a portion of a high school district and create a new unified school district]; *City of Santa Cruz v. Local Agency Formation Com.* (1978) 76 Cal.App.3d 381, 387 ["boundary and annexation determinations of LAFCO under the [former Knox-Nisbet Act were] *quasi-legislative* in nature"].) Despite the trial court's belief that the writ proceeding should be regarded as an administrative mandamus action (Code Civ. Proc., § 1094.5), it was properly designated as a petition for traditional mandamus.[5]

" 'It is established that in reviewing quasi-legislative actions of administrative agencies the scope of judicial review is limited to an examination of the proceeding before the agency to determine whether its actions have been arbitrary, capricious or entirely lacking evidentiary support, or whether it has failed to follow the procedure or give the notices required by law.' (*County of Orange v. Heim* (1973) 30 Cal.App.3d 694, 719 . . . ; see also *California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 211–212 . . . ; *Pitts v. Perluss* (1962) 58 Cal.2d 824, 833–835 . . . ; *Ray v. Parker* (1940) 15 Cal.2d 275, 303–312 . . . .) A corollary to the rule is that an administrative agency exercising a quasi-legislative function is not required to make detailed findings of fact. [Citations.]" (*McKinny v. Oxnard Union High School Dist. Bd. of Trustees* (1982) 31 Cal.3d 79, 88.)

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[5] The trial court's view, in which LAFCO's counsel acquiesced, does not appear to have impacted the court's review. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 427, fn. 4 [substantial evidence test applies to administrative determination of facts regardless whether proceeding was traditional or administrative mandamus]; *County of San Diego v. State of California* (1997) 15 Cal.4th 68, 109 ["Where . . . a 'purely legal question' is at issue, courts 'exercise independent judgment . . . , no matter whether the issue arises by traditional or administrative mandate. [Citations.]' [Citation.]"].)

In keeping with this quite limited scope of judicial review for quasi-legislative actions, section 56107 of the Act states: "No change of organization or reorganization order under this division and no resolution adopted by the commission making determinations upon a proposal shall be invalidated because of any defect, error, irregularity, or omission in any act, determination, or procedure which does not adversely and substantially affect the rights of any person, city, county, district, the state, or any agency or subdivision of the state." (§ 56107, subd. (a).) "All determinations made by a commission under, and pursuant to, this division [the Act] shall be final and conclusive in the absence of fraud or prejudicial abuse of discretion." (§ 56107, subd. (b).) "In any action or proceeding to attack, review, set aside, void, or annul a determination by a commission on grounds of noncompliance with this division, any inquiry shall extend only to whether there was fraud or a prejudicial abuse of discretion. Prejudicial abuse of discretion is established if the court finds that the determination or decision is not supported by substantial evidence *in light of the whole record*." (§ 56107, subd. (c), italics added.)

The substantiality of the evidence in an administrative record to support a quasi-legislative administrative decision is a question of law. (*Western States Petroleum Assn. v. Superior Court*, *supra*, 9 Cal.4th at p. 573; see *San Joaquin Local Agency Formation Com'n v. Superior Court* (2008) 162 Cal.App.4th 159, 167.) Likewise, construction of a statute is a question of law and we are not bound by the lower court's interpretation. (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562; see *Save our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 118.) An appellate court's review of the administrative record for legal error and substantial evidence in traditional mandamus cases is the same as the trial court's: the appellate court reviews the agency's action, not the trial court's decision, and decides questions of law de novo. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,*

40 Cal.4th at p. 427; see also *Lewin v. St. Joseph Hospital of Orange* (1978) 82 Cal.App.3d 368, 387.) Appellant's focus on the trial court's decision is misplaced.

IV

Alleged Decision-Making Errors

A. Fire Protection District Law of 1987

Citing Health and Safety Code section 13801, appellant contends that respondent "evaluated the Application . . . without implementation of the clear Legislative intent of the Fire Law favoring *local determination* of how efficient fire services are to be provided."[6] Health and Safety Code section 13801 is part of the Fire Protection District Law of 1987 (Health & Saf. Code, § 13800 et seq.). (See Health & Saf. Code, § 13800 [short title].) This law expressly provides: "The Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code) shall govern any change of organization or reorganization of a district." (Health & Saf. Code, § 13812; see Health & Saf. Code, § 13822 [once a sufficient petition for formation of a new fire protection district is filed, the local agency formation commission must proceed under the Act].) The Act itself states, with exceptions not here applicable, that it is "the sole and exclusive authority and

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[6] Health and Safety Code section 13801 states: "The Legislature finds and declares that the local provision of fire protection services, rescue services, emergency medical services, hazardous material emergency response services, ambulance services, and other services relating to the protection of lives and property is critical to the public peace, health, and safety of the state. Among the ways that local communities have provided for those services has been the creation of fire protection districts. Local control over the types, levels, and availability of these services is a long-standing tradition in California which the Legislature intends to retain. Recognizing that the state's communities have diverse needs and resources, it is the intent of the Legislature in enacting this part to provide a broad statutory authority for local officials. The Legislature encourages local communities and their officials to adapt the powers and procedures in this part to meet their own circumstances and responsibilities."

procedure for the initiation, conduct, and completion of changes of organization and reorganizations for . . . districts." (§ 56100.)

Appellant has failed to cite any authority showing that the general legislative intent underlying the Fire Protection District Law of 1987 must be considered when a local agency formation commission decides whether to approve or disapprove a proposed reorganization involving the formation of a fire protection district and detachment of territory from another district.

B. *Section 56668 Factors*

Section 56668 specifies 15 factors that a commission must consider in the review of a proposal for a change of organization or reorganization. As indicated, the list is not exclusive. (§ 56668 ["review of a proposal shall include, but not be limited to . . ."].)

Appellant now attacks the trial court's analysis with respect to LAFCO's compliance with section 56668. It specifically complains about the trial court's analysis of the evidence relevant to subdivisions (b), (c), (h), (i), and (m) of section 56668. (See ante, fn. 4.) As we clarified earlier, we review LAFCO's action, not the trial court's decision. (See *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova, supra,* 40 Cal.4th at p. 427.)

Insofar as appellant is contending that LAFCO failed to properly consider all the section 56668 factors and merely paid lip service to them, that claim of error is not substantiated by the record. LAFCO's Resolution No. 93 expressly states that it considered all the statutory factors identified by section 56668. LAFCO was not statutorily required to make express findings concerning those factors. Section 56668 does not assign a particular weight or priority to any of the enumerated factors. In considering the relevant factors, LAFCO enjoyed considerable discretion. (See § 56107, see also *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 288.)

Appellant has not, by reference to the record, demonstrated that LAFCO failed to consider any factor or sub-factor or the evidence relevant thereto in evaluating the

proposal. In absence of any such evidence, the presumption that "official duty has been regularly performed" applies to this mandamus proceeding and we presume that LAFCO considered all statutory factors and the relevant evidence with regard to those factors. (Evid. Code, § 664; see Evid. Code, §§ 606, 660.)

C. *"Affected Territory" and "Adjacent Areas"*

Appellant complains that, in considering Resolution No. 913, LAFCO inaccurately determined that the "affected territory" under the proposed reorganization was the whole area of CSA 48 and failed to focus "on the proper 'affected territory' at issue," in other words, the area of Bonny Doon.

"Affected territory" includes "any territory for which a change of organization or reorganization" is proposed or ordered. (§ 56015.) One of the factors that LAFCO was required to consider in reviewing the proposed reorganization was "information or comments from the landowner or owners, voters, or residents of the *affected territory*." (§ 56668, subd. (m), italics added.) Appellant fails to establish by reference to the record that LAFCO misunderstood the phrase "affected territory" or did not consider this factor and it certainly has not shown that a misunderstanding of that term prejudicially affected LAFCO's decision.

Appellant also appears to be complaining that LAFCO incorrectly interpreted the term "adjacent areas" as used in subdivisions (b) and (c) of section 56668, two of the enumerated statutory factors, to encompass the area of CSA 48. Subdivision (b) of section 56668 required in 2008, and still requires, a commission to take into account the following: "The need for organized community services; the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed . . . formation . . . or exclusion and of alternative courses of action on the cost and adequacy of services and controls in the area and *adjacent areas*." (Stats. 2010, ch. 328, § 93, p. 1521, Stats. 2007, ch. 428, § 1, p. 3705, italics added.) Subdivision (c) of section 56668 required in 2008, and still requires,

consideration of the following: "The effect of the proposed action and of alternative actions, on *adjacent areas*, on mutual social and economic interests, and on the local governmental structure of the county." (Stats. 2010, ch. 328, § 93, p. 1521, Stats. 2007, ch. 428, § 1, p. 3706, italics added.)

Under these provisions, the area proposed for detachment from CSA 48 and inclusion into the proposed Bonny Doon FPD was not the only valid concern. The impact on "adjacent areas" was a legitimate consideration. Appellant disputes that all areas of County Fire are "adjacent" to the proposed Bonny Doon FPD. It asserts that "[t]he premise that there are 'areas' adjacent to Bonny Doon subject to negative impact if the Proposed District is approved is unsupportable" because, "as the map on page 5 of the Executive Officer Report shows," "the only area of CSA 48/County Fire ***adjacent*** to Bonny Doon is the Davenport North Coast area" and "there are *other* autonomous fire districts . . . between Bonny Doon and other areas of County Fire . . . ."

Appellant's interpretation of the word "adjacent" is overly restrictive. The adjective can mean "close to" as well as "adjoining." (American Heritage College Dict. (3d ed. 1997) p. 16.) Moreover, the statutory factors are not exclusive. (See § 56668.) Even appellant acknowledges that "LAFCO was entitled to *consider* potential effects on CSA 48 as part of its overall analysis . . . ." We think it indisputable that LAFCO could reasonably consider the effect of detachment from CSA 48 on the cost and adequacy of services for the areas remaining within County Fire's and CSA 48's service area.

One of the purposes of a commission is to "shape the development of local agencies so as to advantageously provide for the present and future needs of each county and its communities." (§ 56301.) The legislative statement of intent with regard to the Act indicates commissions have been tasked with establishing community service priorities "by weighing the total community service needs against the total financial resources available for securing community services" and setting priorities in a way that "reflects local circumstances, conditions, and limited financial resources." (§ 56001.)

This aspect of their responsibility takes on special significance in times of tight budgets, escalating costs, and economic challenges.

D. *Efficient and Accountable Service Delivery*

Appellant maintains that, in adopting Resolution No. 913, LAFCO "improperly focused on the County Contract and how best to protect County appropriations for the County Contract, rather than analyzing whether the Proposed District would be the most efficient government service provider consistent with Section 56301 and the Act's purpose." It accuses LAFCO of having a "singular obsession with protecting County Contract financing and County Fire . . . ." Without any citation to the administrative record, appellant maintains that LAFCO "did not consider the potential for the positive impact of an independent fire protection district on the local government structure . . . ."

Appellant has not established based on the administrative record that LAFCO disregarded the issue of efficient or effective delivery of needed fire protection and emergency response services in Bonny Doon. LAFCO was statutorily obligated to determine whether County Fire/CSA 48 could "feasibly provide" the needed services "in a more efficient and accountable manner" than Bonny Doon FPD. (See §§ 56301, 56886.5, subd. (a).) In Resolution No. 93, LAFCO expressly resolved that question in favor of the existing agencies and, as we discuss below, we find that determination was supported by substantial evidence.

It is true that the Legislature, in its general statement of intent, "recognize[d] the critical role of many limited purpose agencies, especially in rural communities" and found that "whether governmental services are proposed to be provided by a single-purpose agency, several agencies, or a multipurpose agency, responsibility should be given to the agency or agencies that can best provide government services." (§ 56001.) But generalized statements of intent do not control a commission's exercise of its considerable discretion. (See § 56107, see also *Bozung v. Local Agency Formation Com., supra,* 13 Cal.3d at p. 288 [former law]; cf. *Common Cause v. Board of Supervisors*

(1989) 49 Cal.3d 432, 444 [although Legislature had made clear its desire to maximize voter registration, the decision whether to adopt an employee deputization program rested in the discretion of the individual counties].)

E. *LAFCO's Local Policies*

Appellant argues that LAFCO improperly relied on its Local Standard 2.1.1 and Local Policy 2.4 because they conflict with the Act. Under the Act, each commission must adopt its own written policies and procedures. (§ 56300.) Pursuant to section 56375, subdivision (g), a commission has the power and duty "[t]o adopt written procedures for the evaluation of proposals, including written definitions consistent with existing state law" and a commission "may adopt standards for any of the factors enumerated in Section 56668."

LAFCO Policy 2.1 reflects a preference for agency consolidation, providing: "Proposals, where feasible, should minimize the number of local agencies and promote the use of multi-purpose agencies." Policy Standard 2.1.1 sets an order of *preference* for the provision of "[n]ew or consolidated services" and the formation of a new single-purpose district is least favored. Policy Standard 2.1.2 states that "[t]he Commission will promote and approve district consolidations, where feasible."

LAFCO Policy 2.4 states that "[t]he Commission shall consider the effects of a proposed action on adjacent areas, mutual social and economic interests, and on local governmental structure."

Appellate courts are generally guided by the following rule: "[A]dministrative interpretations must be rejected where contrary to statutory intent. [Citation.] But because of the agency's expertise, its view of a statute or regulation it enforces is entitled to great weight unless clearly erroneous or unauthorized. [Citations.] Courts may not substitute their judgment for that of the agency on matters within the agency's discretion. [Citation.]" (*Pacific Legal Foundation v. Unemployment Ins. Appeals Bd.* (1981) 29 Cal.3d 101, 111.)

As to Local Policy 2.4, we discern absolutely no conflict between its language and section 56668, subdivision (c), which likewise requires consideration of "the effect of the proposed action" "on adjacent areas, on mutual social and economic interests, and on the local governmental structure of the county." Insofar as appellant is baldly attacking LAFCO's application of this local policy without any reference to the record, this assignment of error must be rejected.

As to Local Standard 2.1.1, appellant charges that it establishes a "rigid order of preference" that places a single purpose district such as the proposed district "at the bottom of the list" and prevented LAFCO from taking into account "the critical role of limited purpose agencies in rural communities (like the Bonny Doon area) . . . ." To the contrary, this standard is broadly consistent with the Act, which expresses a general legislative preference in favor of providing needed services within existing agencies and against the proliferation of new single-purpose agencies unless they will be the more efficient and accountable service providers.

The legislative declaration of intent with regard to the Act states in part: "The Legislature finds and declares that it is the policy of the state to encourage orderly growth and development which are essential to the social, fiscal, and economic well-being of the state. The Legislature recognizes that the logical formation and determination of local agency boundaries is an important factor in promoting orderly development and in balancing that development with sometimes competing state interests of discouraging urban sprawl, preserving open-space and prime agricultural lands, and efficiently extending government services. . . . [T]he Legislature further finds and declares that this policy should be effected by the logical formation and modification of the boundaries of local agencies, *with a preference granted to accommodating additional growth within, or through the expansion of, the boundaries of those local agencies* which can best accommodate and provide necessary governmental services and housing for persons and families of all incomes in the most efficient manner feasible." (§ 56001, italics added.)

Section 56301, which concerns the purposes of local agency formation commissions, states in pertinent part: "When the formation of a new governmental entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose agency is deemed necessary, the commission shall consider reorganization with other single-purpose agencies that provide related services." Section 56886.5, subdivision (a), which specifically addresses the formation of a district, similarly states: "If a proposal includes the formation of a district . . . , the commission shall determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose local agency is deemed necessary, the commission shall consider reorganization with other single-purpose local agencies that provide related services." Together these statutory provisions express a general preference in favor of agency consolidation and against the creation of additional single-purpose local agencies.

We cannot say that Standard 2.1.1 facially conflicts with the Act's indicated preferences. It merely states an "order of preference" and it does not make this standard, or the policy it implements, the determining factor, to the exclusion of other relevant factors, in evaluating a proposed reorganization. Neither has appellant established by specific references to the record that LAFCO actually applied the policy inflexibly without regard to other valid considerations or in contravention of the Act's purposes. LAFCO's resolution reflects a number of policy determinations went into its decision to disapprove the proposed reorganization.

V

Substantiality of the Evidence

A. *LAFCO's Decision*

LAFCO's Resolution No. 913 specified four of its reasons for disapproving the proposed reorganization. For its first two reasons, LAFCO relied upon sections 56301 and 56886.5, subdivision (a), respectively.

LAFCO determined, with respect to these statutory provisions, that the existing agencies could provide fire and initial emergency services more cost efficiently than the proposed Bonny Doon FPD. It found the existing agency could "provide fire and initial emergency services more efficiently than the model presented in Application No. 913" and this was true for both the Bonny Doon area and the entire area within CSA 48. It stated: "County Service Area 48 is significantly more cost-efficient than the cost of services would be in Bonny Doon and elsewhere in rural Santa Cruz County under the model proposed by Application Number 913." LAFCO further stated that it had evaluated the "relevant efficiencies" and did not "deem the new district necessary." It implicitly found that the existing agencies could feasibly provide the needed services "in a more efficient and accountable manner."

A third consideration was its local policy standard that gave the lowest preference to a single-purpose district, such as the proposed Bonny Doon FPD. The resolution stated: "The service is currently being provided by an existing district of which the Board of Supervisors is the governing body, which is a higher priority service organization and a feasible means of delivering the service."

A fourth basis for its decision was the adverse impact of the proposed reorganization on remaining area of CSA 48. Citing its local Policy 2.4, the resolution explained: "The Commission has considered the potential effects of the proposal upon Bonny Doon, Davenport, the North Coast, Skyline, Summit, Corralitos, and the other areas served by County Service Area 48. The application would likely result in County

Service Area 48 losing significant revenues and potentially causing a degradation of services in one or more of the four off-season paid stations . . . . As a result, formation of a Bonny Doon Fire Protection District would likely have a negative effect on adjacent areas."

Appellant challenges the substantiality of the evidence to support LAFCO's determinations regarding the comparative cost effectiveness of the current fire protection services and the proposed district and the probability of harm to CSA 48. It maintains that the County's estimates of potential revenue losses and cost savings to CSA 48 if the proposed reorganization were approved did not constitute substantial evidence. Appellant questions the evidence indicating that it would cost approximately $250,000 to relocate a seasonal CAL FIRE station, funded by the State, to Bonny Doon and convert such station to year-round service under a cooperative contract with the State. Appellant attacks the sufficiency of the evidence to support a conclusion that such a station would be more cost efficient than the proposed Bonny Doon FPD with a pro forma budget of approximately $650,000.

B. *"Substantial Evidence" Test*

The legal principles governing judicial review of the substantiality of the evidence, which appellant often overlooks, are well established. In determining whether substantial evidence supports LAFCO's Resolution No. 913, "we resolve all conflicts in favor of the prevailing party, indulging in all legitimate and reasonable inferences from the record." (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com.* (1999) 21 Cal.4th 352, 374.) "When a finding is attacked as being unsupported, the power of the appellate court begins and ends with a determination as to whether there is any substantial evidence in the record, contradicted or uncontradicted, that will support the finding. When two or more inferences can be reasonably deduced from those facts, the reviewing court has no power to substitute its deductions for those of the fact finder.

([*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559,] 571 . . . .)" (*Ibid*.)

"We do not inquire whether, if we had the power to do so, we would have taken the action taken by the agency. (*Western States Petroleum Assn. v. Superior Court* (1995) 9 Cal.4th 559, 573–574 . . . ; *Fullerton Joint Union High School Dist. v. State Bd. of Education* (1982) 32 Cal.3d 779, 786 . . . .)" (*Associated Builders and Contractors, Inc. v. San Francisco Airports Com., supra,* 21 Cal.4th at p. 361.) We do not superimpose our own policy judgment, reweigh the evidence, or review the wisdom of a quasi-legislative decision. (See *Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702; *Manjares v. Newton* (1966) 64 Cal.2d 365, 371; *Pitts v. Perluss* (1962) 58 Cal.2d 824, 832-833; see also *Western States Petroleum Assn. v. Superior Court, supra,* 9 Cal.4th 559, 579.)

"Evidence is substantial if a reasonable trier of fact could conclude that the evidence is reasonable, credible, and of solid value. [Citation.]" (*Plastic Pipe and Fittings Ass'n v. California Building Standards Com'n* (2004) 124 Cal.App.4th 1390, 1407.)

C. *Commission's View of the Substantiality of the Evidence*

Appellant first insists that LAFCO knew its resolution was not supported by substantial evidence. LAFCO's belief or disbelief that the evidence would satisfy the appellate standard for reviewing the sufficiency of the evidence is irrelevant.

D. *Significant Net Loss of Revenues to CSA 48*

The administrative record shows that County Fire/CSA 48 would have lost the revenue stream from the Bonny Doon area if LAFCO approved the proposal. The Executive Officer's Report indicates that specific financial information came from the Santa Cruz Director of Emergency Services, who calculated a potential net loss to County Fire of approximately $360,000 ($427,000 [estimated revenue from Bonny Doon] minus about $65,000 [estimated cost savings]). The administrative record also reflects that the

Santa Cruz County Auditor-Controller's Office, the Emergency Services Administrator, and General Services Director provided information to LAFCO's Executive Officer regarding likely revenue losses to CSA 48 under the proposal.

The Act provides: "The officers and employees of a city, county, or special district, including any local agency, . . . shall furnish the executive officer with any records or information in their possession as may be necessary to assist the commission and the executive officer in their duties, including but limited to the preparation of reports pursuant to Sections 56665 [report on application for change of organization or reorganization] and 56800 [comprehensive fiscal analysis regarding proposed incorporation of city]." (§ 56386; see § 56043 [definition of "incorporation"].) The record does not show that the information provided by public officers and employees to Executive Officer McCormick was not within their expertise and knowledge.[7]

As stated, the Act requires a commission's executive officer to prepare a report on each application proposing a change of organization or reorganization. (§ 56665.) A commission conducting a hearing on such a proposal application must, by law, consider the executive officer's report. (§56666, subd. (b).) Appellant has failed to establish that information contained in an executive officer's report is not substantial evidence. In this case, LAFCO had before it evidence sufficient to believe that County Fire/CSA 48 would lose at least approximately $427,000 if the proposed reorganization, which included the Bonny Doon detachment, was approved.

The administrative record contains a Comparative Cost Analysis chart for 2006-2007 estimating that Bonny Doon contributed a total of $427,683 to County Fire's revenues, made up of property tax revenue of $277,085 and assessments of $150,598. Appellant acknowledges that the administrative record also contains a 2006 Bonny Doon

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[7] LAFCO's 2005 Countywide Service Review indicates that the County's Office of Emergency Services administers the County Fire Department and CSA 48 and it appears that the office operates under the supervision of the General Services Department.

parcel list showing CSA 48 fees assessed on each parcel totaling $150,655.44. These numbers are roughly consistent with the revenue figures originally advanced by County officials.

Revenue information, which was provided by the Executive Officer's Report, indicated the property tax and assessment revenues for fire protection contributed by Bonny Doon increased after 2006. Attachment I to the Executive Officer's Report states that Bonny Doon contributed $287,471 property tax revenues to County Fire during 2007-2008.[8] The chart also reflects that LAFCO staff determined that assessment revenues of $156,019 were generated from the Bonny Doon area in 2007-2008 based upon an assessment of $117 for a typical house and estimated assessment revenues from Bonny Doon in 2008-2009 would be $161,140 based upon an assessment of $120.84 for a typical house.[9] Correspondence from the Budget and Tax Manager of the Santa Cruz County Auditor-Controller's Office, dated July 28, 2008, which is contained in the administrative record, provides data for 2007-2008 showing that the proposed reorganization would result in a "tax shift" of $287,471.[10] The originally forecasted revenue loss of $427,000 upon detachment was not updated to include the 2007-2008 and 2008-2009 increases in property tax and assessment revenues.

The estimated $65,000 cost savings to be realized by County Fire from detachment of the Bonny Doon area was admittedly a ballpark figure. A September 2008

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[8] At the reconsideration hearing, Executive Officer McCormick stated that he obtained the data regarding property tax revenues of $287,471 collected in the Bonny Doon area "directly from the Auditor's office, and the spreadsheet includes every parcel in Bonny Doon."

[9] LAFCO's 2005 Countywide Service Review indicates that assessment fees are "allowed to increase in accordance with increases in the Consumer Price Index."

[10] Appellant appears to now complain that those tax revenues were only an estimate. The correspondence indicated that the calculation was based on concrete data from the affected tax rate areas, which was attached, and was represented to be "based on the current distribution of incremental tax revenue for 2007-2008 generated by the valuation provided by the Assessor." Appellant presented no contrary evidence.

email from Executive Officer McCormick explained that the number could not be extracted from any budget. His report indicated that the estimate was based on a February 20, 2007 letter from the Director of Emergency Services, who presumably would be familiar with County Fire's finances. (See ante, fn. 7.)

Proponents and supporters of the proposed reorganization did not present any evidence that the cost savings would be greater than $65,000.[11] They did not submit affirmative evidence that the detachment would cause a net loss of revenues from the Bonny Doon area of less than $360,000.

The Executive Officer's Report explained that the revenue collected by CSA 48 supported County Fire and paid for its contracts with CAL FIRE, whose services were augmented by the five volunteer companies that were trained, supervised, and supported by CAL FIRE. Bonny Doon was one of those volunteer companies. LAFCO could reasonably infer that any reduction in County Fire expenses from the proposed detachment of the Bonny Doon area would be marginal since County Fire would continue to carry the cost of contracting with CAL FIRE to provide year-round service from certain stations operated by CAL FIRE and to train, supervise, and support the remaining volunteer companies.[12]

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[11] In the materials submitted by Friends of Bonny Doon Fire in support of a request for consideration, it was asserted that County Fire spent only about $41,000 on Bonny Doon in 2007. This would suggest that the net economic loss to CSA 48 might be even greater than projected. Executive Officer McCormick indicated at the reconsideration hearing that cost savings could result from not having to train and insure Bonny Doon volunteers or provide or maintain Bonny Doon equipment. He also indicated that the primary costs of fire protection were loaded into the overhead and staffing of the County Fire/CAL FIRE stations and there was an incremental cost to support the Bonny Doon volunteers and stations, which explained the disparity between revenues and costs attributable to the Bonny Doon area. At the reconsideration hearing, Chief Ferreira explained that the majority of costs were for paid staff and County Fire/CAL Fire did not maintain any record of the costs incurred to support only the Bonny Doon volunteers.

[12] The September 2008 Executive Officer's Report stated that the County's current contract with CAL FIRE cost $1,725,327.

Appellant complains that the evidence of the 2006 CSA 48 assessment revenues was not current information and the forecast revenue losses were speculative. But there was no evidence that, if LAFCO approved the proposed reorganization, the loss of assessments or property tax revenues would be less than the amounts actually collected from Bonny Doon in recent years. Even though the projected amount of those probable revenue losses was necessarily an estimate, the estimate was not based on mere speculation. Moreover, LAFCO's mandate included consideration of the "probable effect" of the proposed reorganization "on the cost and adequacy of services and controls in the area and adjacent areas." (§ 56668, subd. (b); see American Heritage College Dict. (3d ed. 1997) p. 1090 ["probable" means "[l]ikely to happen or be true" or [l]ikely but uncertain; plausible"].) Appellant has failed to show that the estimates could not constitute substantial evidence.

Moreover, in its resolution, LAFCO did not find a specific amount of revenue would be lost, only that such loss was likely to be significant. Substantial evidence supports this determination.

The Executive Officer's Report also informed LAFCO: "Notwithstanding the outcome of the Bonny Doon application to LAFCO, County Service Area 48 (County Fire) is short of revenues to continue the level of service provided in the previous five years. The main reason for the shortfall is that increased costs of State firefighter salaries and benefits have increased faster than revenues. In order to pay the higher contract costs, County Fire chose to maintain staffed stations and staffing levels, and deferred replacing apparatus." It further related: "The property taxes have not been sufficient to fund the County Fire program, and County Service Area 48 has passed a fire suppression assessment that has an annual inflation factor. . . . [¶] Foreseeing a need to increase the level of assessments to maintain the County Service Area's five volunteer companies, four off-season contracts with CAL FIRE, and to restore its engine replacement program, the County Service Area proposed an assessment increase to $215.80 per house. In the

fall 2007, via a mail ballot process, this higher assessment failed . . . . Subsequent to the assessment's failure, County Fire has reduced staffing on the off-season paid companies." The report advised that the net loss of revenues was "approximately the cost of keeping one of the four paid stations open outside fire season."

Based on the report, LAFCO could reasonably conclude that a significant net loss of revenues would likely adversely impact the adequacy of services provided by County Fire.

We uphold as supported by substantial evidence LAFCO's determination that approval of the proposed reorganization would "likely result in [CSA] 48 losing significant revenues and potentially causing a degradation of services in one or more of the four off-season paid stations . . . ."

E. Efficient Provision of Government Services

The legal issue was whether existing agencies could "feasibly provide the needed service or services in a more efficient and accountable manner."[13] (§§ 56301, 56886.5, subd. (a).) The Act defines "feasible" to mean "capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, legal, social, and technological factors." (§ 56038.5.) Appellant asserts that substantial evidence does not support LAFCO's conclusions regarding comparative cost effectiveness. We disagree.

LAFCO staff calculated that, if the seasonal CAL FIRE station in Felton were moved to Bonny Doon (which appeared to be a viable option since Felton FPD operated

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[13] Section 56886.5, subdivision (a), provides: "If a proposal includes the formation of a district . . . , the commission shall determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner." Section 56301 similarly provides: "When the formation of a new government entity is proposed, a commission shall make a determination as to whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner."

its own nearby station), it would cost approximately $250,000 per year to operate the CAL FIRE station year round. In an email dated August 29, 2008, Chief John Ferriera responded to Executive Officer McCormick's inquiry whether $250,000 was an accurate estimate of the cost to operate a seasonal CAL FIRE station, relocated to Bonny Doon, year round under an "Amador contract."[14] Chief Ferreira replied by email: "[T]he $250K estimate for an 'Amador' engine is accurate. The contracting agency pays the cost of the Firefighters (2 per day) and the State provides the company officer at no additional charge (the Fire Captain is already on the State payroll for its wildland mission, the firefighters, which are normally layed [sic] off at the end of fire season, are the 'additional' cost borne by the contracting agency) see Public Resources Code 4142-46."[15] Although appellant declares that the estimated cost of $250,000 was "questionable" and "completely unsubstantiated," there is no reason to think that this information was not within the expertise or knowledge of Chief Ferreira, who was the Chief of CAL FIRE in San Mateo and Santa Cruz Counties and effectively Chief of County Fire under the County's cooperative agreement with the state.

The proponents' updated pro forma budget for an independent Boony Doon FPD was approximately $660,000 per year; it was set forth in an attachment to the Executive Officer's Report. The administrative record contains a spreadsheet comparing a Bonny Doon FPD's proposed budget of $689,979 (reduced to $660,564 in handwriting) to the

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[14] "[C]ontracts with local governments for the [Department of Forestry and Fire Protection] to provide local fire protection and emergency services pursuant to [Public Resources Code] Section 4144 [are] commonly referred to as 'Amador agreements.' " (Pub. Res.Code, § 4137, see Pub. Res. Code, § 4003.)

[15] In addition, the written response of the County's Fire Department Advisory Commission to Application No. 913, dated February 7, 2007, was contained in the administrative record. The advisory commission reported that it would cost approximately $218,000 per station to keep "the four County Fire career staffed Amador contract Stations" in operation and staffed with "two career firefighters" during non-fire season 2007-2008.

budgets of other local FPDs.[16] The scribbled notes on the spreadsheet made by an unknown author do not establish that the Bonny Doon FPD could operate on less than $660,564. A notation on the pro forma budget (Attachment N to the Executive Officer's Report) stated: "Proponents have adjusted the pro forma budget amounts slightly between the 2006 application and August 2008" and "[o]nly the updated amounts are shown." Proponents did not present evidence that the proposed district could function on a smaller budget.

Appellant also suggests that LAFCO's determinations concerning the "relative efficiencies" were not supported by substantial evidence because Bonny Doon taxpayers would pay more under the existing system than under the proposed district. Appellant points to Attachment "I" to the Executive Officer's Report, which stated that (1) the cost of a CSA 48 assessment on a "typical house" would be $120.84 in 2008-2009 and (2) an additional Bonny Doon assessment of $187.48 on a "typical house" in 2008-2009 would be sufficient to fund the approximate $250,000 needed to staff a County Fire/CAL FIRE station in Bonny Doon during non-fire season. Appellant argues that, when these assessments are added together, "it is evident that Bonny Doon area property owners would pay a total of $698,611 under the revised Amador Plan instead of the $660,000 proposed for the Proposed District" and a typical house "would in fact pay $308.32 in CSA assessments instead of $248.00 proposed for the Proposed District." Appellant's reasoning is flawed because fire suppression assessments or fees are revenues, not expenditures or costs, from the point of view of the proposed district or a relocated CAL FIRE station operating year-round in Bonny Doon. The issue of the source of funding is separate from the question of the projected annual cost of operation.

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[16] A spokesperson for appellant stated at the hearing on the request for reconsideration that they submitted a five-district budget comparison with the application proposal.

In addition, there was concern that the proponent's proposed Bonny Doon fire protection tax was not sufficient to support the proposed 24/7 levels of service. The proposal application indicated that the proposed Bonny Doon fire tax rate "assumes the County will transfer ownership of the two Bonny Doon fire stations and the four County-owned vehicles at a cost of no more than $1.00 each." Impliedly, the proposed annual fire protection tax of about $248 per house to support the proposed Bonny Doon FPD would need to be increased if LAFCO approved the proposal but this transfer at nominal cost did not occur.

The Executive Officer's Report indicated that the proposed district intended to staff the McDermott station around the clock and would accomplish this level of staffing by using part-time staff and paying significantly below market rates and by using volunteers and sleepers (interns with fire training). The report stated: "The success of the Bonny Doon service plan would likely require expansion of the number of trained volunteers on the Bonny Doon Roster, the commitment of many volunteers to sleep at the station several nights each month, and the sustained commitment to continue this effort permanently . . . . If the available revenues don't support the staffing costs, or if the volunteer corps becomes subject to a high attrition rate, a likely operating adjustment would be for the district to reduce night and weekend staffing during low activity periods. During those periods, the district would then have a volunteer response similar to the response currently provided under CAL FIRE/County Fire."

The County's General Services Director noted, in a February 2007 letter to LAFCO's Executive Director (attachment G to the Executive Officer's Report), that "the expenditures appear to be understated, or at least well below market conditions for qualified personnel, insurances, services and supplies." The Director was concerned that "the proposed budget does not appear sufficient to support the operational levels and improvements put forth by the applicant." He stated that "[t]he applicant's supplementary

information outlines a paid staffing pattern that does not appear robust enough to deliver the service improvements put forth."

Under either scenario, continuation of the existing system or the proposed reorganization, volunteers were expected to play an important role in the delivery of services. But an independent Bonny Doon FPD would necessarily duplicate some of the County Fire/CAL FIRE management and infrastructure, which would continue to operate, regardless of the proposed detachment. The proposed district would have been responsible for the full costs of its management and staffing while a year-round CAL FIRE station in Bonny Doon, under a cooperative agreement with the State of California, would take advantage of the state funding for wildland fire suppression.

As indicated by the Executive Officer's Report and relevant attachments, proponents of the proposed reorganization also assumed that the County would transfer county-owned volunteer stations in Bonny Doon, vehicles and apparatus to the new district at no or nominal cost. But the report disclosed that the County estimated that the apparatus and equipment had a value of $446,151 and the two volunteer stations had a value of $3,700,000 and the County wanted to be compensated for any transfer of assets. LAFCO could reasonably infer that appellant's assumption regarding the start-up costs of the proposed FPD were invalid.

The annual cost of approximately $250,000 to operate a year round County Fire/CAL FIRE station in Bonny Doon was far less that the projected cost of over $650,000 to run an autonomous fire protection district in Bonny Doon. In addition, the Executive Officer's report set forth the alternative of CSA 48 being divided into zones, which would allow a Bonny Doon zone to obtain different or a higher level of services by the passage of a zone-wide assessment or tax. Substantial evidence supported LAFCO's determination that the existing agencies could "feasibly provide" needed fire protection and emergency services in "a more efficient and accountable manner" (§§ 56301, 56886.5, subd. (a)) than the proposed Bonny Doon FPD.

VI

Quasi-Legislative Administrative Action Must Be Rational

It is the courts' role "in reviewing certain quasi-legislative administrative decisions in mandamus proceedings" to " 'ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.' (*California Hotel & Motel Assn. v. Industrial Welfare Com., supra,* 25 Cal.3d 200, 212 . . . , fn. omitted.)" (*Western States Petroleum Assn. v. Superior Court, supra*, 9 Cal.4th at p. 577.) If the stated basis for a commission's decision does not have a rational connection to the purposes of the enabling statute, "a determination by the administrative agency will not withstand the scrutiny of judicial review regardless of the substantiality of the evidence" to support factual findings. (*McBail & Co. v. Solano County Local Agency Formation Com'n* (1998) 62 Cal.App.4th 1223, 1227.)

The record does not disclose that LAFCO failed to adequately consider all relevant factors and policy considerations or that it acted irrationally, arbitrarily or capriciously with regard to the Act's purposes. Here, LAFCO faced competing local interests and differences of opinion with regard to the present and future needs of the communities that would be impacted by the proposed reorganization. It also had to contend with the limited financial resources available for fire protection and emergency response services. LAFCO's Executive Officer put forward a number of alternatives that would accommodate the desires of the Bonny Doon community for improved services within the existing governmental structures while still addressing the need to maintain the adequacy of services provided to other areas served by County Fire/CSA 48. The Bonny Doon community's aspiration for its own independent fire district did not necessarily trump other valid considerations. LAFCO explicitly determined that the existing agencies could feasibly provide needed services in a more efficient and accountable manner, a determination we have concluded is supported by substantial evidence. Of

course, a different result might obtain in the future if the proffered alternatives prove infeasible (see § 56038.5 [definition of "feasible"]) and the service needs of the Bonny Doon community are not be met within the existing governmental structures.

We cannot substitute our "judgment for that of an administrative agency which acts in a quasi-legislative capacity" (*Pitts v. Perluss, supra*, 58 Cal.2d at p. 832) regardless of the soundness of the arguments favoring a different outcome. "[I]f reasonable minds may disagree as to the wisdom of [an administrative agency's] action, its determination must be upheld (*Rible v. Hughes* (1944) 24 Cal.2d 437, 445 . . .)." (*Manjares v. Newton, supra,* 64 Cal.2d at p. 371.) Appellant has not carried its burden of demonstrating that LAFCO's decision lacked a rational connection between the relevant factors, the choice made, and the manifest purposes of the enabling statute.

VII

Alleged Procedural Errors

A. *Notice under Brown Act*

The Agenda for LAFCO's September 22, 2008 meeting specified that there would be a public hearing on "LAFCO Application No. 913[,] Formation of a Bonny Doon Fire Protection District and Detachment of Bonny Doon Area From County Service Area 48 (County Fire)." The agenda for LAFCO's December 8, 2008 meeting specified that there would be a public hearing on "LAFCO No. 913 Reconsideration, Formation of Bonny Doon Fire Protection District and Detachment from County Service Area 48 (County Fire)." Appellant complains that LAFCO violated the Ralph M. Brown Act ("Brown Act") (§ 54950 et seq.) by discussing, without prior notice, the County Fire Protection Plan and the County's contract for fire services at the hearing on the proposal and the reconsideration hearing.

The Brown Act generally requires "[a]ll meetings of the legislative body of a local agency [to] be open and public . . . ." (§ 54953.) It mandates: "At least 72 hours before a regular meeting, the legislative body of the local agency, or its designee, shall post an

agenda containing a brief general description of each item of business to be transacted or discussed at the meeting, including items to be discussed in closed session." (§ 54954.2, subd. (a)(1).) As a general rule, "[n]o action or discussion shall be undertaken on any item not appearing on the posted agenda," although there are exceptions. (§ 54954.2, subd. (a)(2).) But the Brown Act requires that the agenda include only "a brief general description of each item of business." (§ 54954.2, subd. (a)(1).)

Appellant has failed to show that any discussion of the County's specific plans for fire protection or its cooperative contract with CAL FIRE were separate items of business, distinct from Application No. 913 for formation of a Bonny Doon FPD and detachment from CSA 48 or distinct from reconsideration of Resolution No. 913. By statute, LAFCO was required to consider the proposal's "consistency with city or county general and specific plans" (§ 56668, subd. (g)) and "the probable effect" "on the cost and adequacy of services and controls in the area and adjacent areas" as part of its review of the pending proposal. (§ 56668, subd. (b).) The agenda descriptions of the items of business concerning the proposed district were sufficient to encompass the proceedings now being challenged and we discern no Brown Act defect in the posted agendas.[17]

B. *Allegedly Improper De Facto Review of Municipal Services*

Appellant also claims that that LAFCO improperly broadened its application and reconsideration hearings such that they became "a *de facto* County-wide" "municipal

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[17] Appellant's First Amended Verified Petition For Writ of Mandate did not expressly allege any violation of the Brown Act and did not state facts showing compliance with the procedural prerequisites to a mandamus action under the Brown Act (see § 54960.1). Nevertheless, we briefly address the issue since the trial court reached the issue in its statement of decision, presumably responding to appellant's memorandum of points and authorities in support of its subsequent "Motion for Issuance of Writ of Mandate." Given our conclusion, we need not resolve whether the procedural prerequisites to raising a Brown Act claim were satisfied or whether the trial court exceeded its authority in reaching the issue on the petition before it.

services review."[18] Nothing in the record suggests that LAFCO was conducting a municipal services review when it should have been reviewing the proposed reorganization or request for reconsideration. "Consistency with city or county general and specific plans" was, and still is, one of the mandated factors to be considered in reviewing a reorganization proposal. (Stats. 2007, ch. 428, § 1, p. 3706, see § 56668, subd. (g).) Another requisite factor was, and still is, "the present cost and adequacy of governmental services and controls in the area; probable future needs for those services and controls; probable effect of the proposed . . . formation . . . or exclusion and of alternative course of action on the cost and adequacy of services and controls in the area and adjacent areas." (Stats. 2007, ch. 428, § 1, p. 3705, see § 56668, subd. (b).) In addition, the statutory factors are not exclusive and LAFCO could properly consider any relevant factor.

Appellant has not shown that LAFCO exceeded its statutory authority. It certainly has not demonstrated any error "adversely and substantially" affecting appellant's rights. (§ 56107.)

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[18] "In order to prepare and to update spheres of influence in accordance with Section 56425," a commission must "conduct a service review of the municipal services provided in the county or other appropriate area designated by the commission." (§ 56430, subd. (a).) In conducting a municipal services review, a commission must make determinations regarding specified matters (*ibid.*), including the "[f]inancial ability of agencies to provide services" (§ 56430, subd. (a)(4)), and "comprehensively review all of the agencies that provide the identified service or services within the designated geographic area" (§ 56430, subd. (b)). "In order to carry out its purposes and responsibilities for planning and shaping the logical and orderly development and coordination of local governmental agencies to advantageously provide for the present and future needs of the county and its communities," a commission must "develop and determine the sphere of influence of each local governmental agency within the county and enact policies designed to promote the logical and orderly development of areas within the sphere." (§ 56425; see § 56076 [defining "sphere of influence"].)

C. *Independent Judgment and Conflict of Interest*

1. *Independent Judgment*

The trial court determined that the LAFCO Commissioners "exercised their fair and independent judgment in evaluating the application." Appellant contends that "[t]aken as a whole the Application proceedings do not evidence independent evaluation of the Application, but rather a predisposition to consideration of the County's interests." (Fn. omitted.) Appellant declares that "a fair trial is denied if the Commissioners have the interests of their respective constituency in mind, rather than their duties as LAFCO Commissioners" and appellant was denied a fair hearing because the "LAFCO commissioners did not exercise independent judgment."

Section 56325.1 provides: "While serving on the commission, all commission members shall exercise their independent judgment on behalf of the interests of residents, property owners, and the public as a whole in furthering the purposes of this division. Any member appointed on behalf of local governments shall represent the interests of the public as a whole and not solely the interests of the appointing authority. *This section does not require the abstention of any member on any matter, nor does it create a right of action in any person.*" (Italics added.) While this section informed the commissioners of their decision-making role, it did not compel any commissioner to abstain "on any matter" and it did not give appellant a right of action.

Insofar as appellant may be implicitly claiming that the procedure was constitutionally deficient, we reject it. "When . . . an administrative agency conducts adjudicative proceedings, the constitutional guarantee of due process of law requires a fair tribunal. (*Withrow v. Larkin* (1975) 421 U.S. 35, 46, 95 S.Ct. 1456, 43 L.Ed.2d 712.) A fair tribunal is one in which the judge or other decision maker is free of bias for or against a party. (*People v. Harris* (2005) 37 Cal.4th 310, 346 . . . ; see *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1025 . . . ['When due process requires a hearing, the adjudicator must be impartial.'].) Violation of this due process guarantee can be

demonstrated not only by proof of actual bias, but also by showing a situation 'in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable.' (*Withrow v. Larkin, supra,* at p. 47 . . . .)" (*Morongo Band of Mission Indians v. State Water Resources Control Bd.* (2009) 45 Cal.4th 731, 737.)

The full adjudicatory procedures guaranteed by due process do not, however, generally apply to quasi-legislative action. (See *Western Oil & Gas Ass'n v. Air Resources Board* (1984) 37 Cal.3d 502, 525 [no constitutional issue of procedural due process was presented because the Board was acting in a quasi-legislative capacity]; *Horn v. County of Ventura* (1979) 24 Cal.3d 605, 612-613 ["[O]nly those governmental decisions which are *adjudicative* in nature are subject to procedural due process principles. *Legislative* action is not burdened by such requirements. [Citations]"]; *San Diego Gas & Electric Co. v. Superior Court* (1996) 13 Cal.4th 893, 951 [" 'There is no constitutional requirement for any hearing in a quasi legislative proceeding.' [Citation.] A fortiori, there is no constitutional requirement that all private parties who might conceivably be affected by the outcome of such a proceeding be given notice and opportunity to be heard"]; *Franchise Tax Bd. v. Superior Court in and for Sacramento County* (1950) 36 Cal.2d 538, 549 ["Where the proceedings are quasilegislative in character, a hearing of a judicial type is not required . . . . [Citations.]"].) Review of a quasi-legislative action is ordinarily limited to an examination of proceedings to determine whether it was arbitrary or entirely lacking in evidentiary support or whether the agency violated procedure required by law. (See *Industrial Welfare Com. v. Superior Court* (1980) 27 Cal.3d 690, 702; *Pitts v. Perluss, supra,* 58 Cal.2d at p. 833.)

In any case, the fact that some of the commissioners were seriously concerned with the probable impact of the proposed district on the revenues and services of County Fire/CSA 48 does not demonstrate that any commissioner failed to exercise independent judgment. As repeatedly stated, LAFCO's commissioners were entitled to consider "the

probable effect" of the proposed reorganization "on the cost and adequacy of services and controls in the area and adjacent areas." (§ 56668, subd. (b).) Appellant has not established based on the record that any commissioner failed to exercise independent judgment in evaluating the proposal. In the absence of affirmative evidence to the contrary, we assume the commissioner properly executed their duties. (See Evid. Code, § 664 [presumption that "official duty has been regularly performed"].)

2. *Conflict of Interest*

The trial court found that the "LAFCO commissioners and staff had no conflicts of interest as defined in section 56384(d)." Appellant asserts that the LAFCO commissioners who voted to disapprove the proposed reorganization, LAFCO's Executive Officer, and its legal counsel all improperly favored the interests of the County in rejecting the application for formation of the district by focusing on the loss of revenue to County Fire and the funding of the County's contract with CAL FIRE. Appellant further claims that counsel's dual representation of the County and LAFCO was an actual or potential conflict of interest.[19]

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[19] We granted appellant's request to take judicial notice of the declaration of Phillip Passafuime, an attorney representing appellant, which was filed in the trial court in support of appellant's objections to the trial court's proposed statement of decision and judgment in this case. (Evid. Code, §§ 452, subd. (d), 459, subd. (a).) In this declaration, attorney Passafuime indicated that LAFCO's counsel represented the County at an October 13, 2010 meeting scheduled before the County Planning Commission to address the appeal of the County Zoning Administrator's approval of a permit allowing the County to build a garage on the County-owned property that was leased to appellant as its volunteer fire station. According to the declaration, appellant "opposed the County permit as it presupposed that a proposed special district would not be formed . . . ." This declaration was extraneous to the administrative record and it was not admitted into the evidence before the trial court and the trial court made no new factual finding based on it. In addition, the declaration did not show that LAFCO's counsel was dually representing both the County and LAFCO in 2008 when LAFCO made its decision and appellant has not established that dual legal representation of a County and its commission is the type of conflict of interest precluded by section 56384, subdivision (d).

Under section 56384, a local agency formation commission is required to appoint an alternate executive officer or an alternate legal counsel to advise it whenever such person is subject to a conflict of interest on a matter before the commission. (§ 56384, subds. (a) and (b).) The term "conflict of interest" under this section has the same definition as it does "for the purpose of the Political Reform Act of 1974" and includes "matters proscribed by Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1." (§ 56384, subd. (d).)

The Political Reform Act of 1974 (§§ 81000 et seq.) provides that "[n]o public official at any level of state or local government shall make, participate in making or in any way attempt to use his official position to influence a governmental decision in which he knows or has reason to know he has a *financial interest*." (§ 87100, italics added; see §§ 87102.5, 87102.8.) Section 1090 states in pertinent part: "Members of the Legislature, state, county, district, judicial district, and city officers or employees shall not be *financially interested* in any contract made by them in their official capacity, or by any body or board of which they are members." (Italics added.)

Appellant has not shown that LAFCO's Executive Officer or its legal counsel had a financial interest in LAFCO's decisions regarding the application proposal. Neither has appellant demonstrated any other "conflict of interest" within the specific meaning of any statutory provision referenced by section 56384, subdivision (d). Furthermore, the very structure of a local agency formation commission contemplates that two of the commissioners will be members of the county board of supervisors.[20] Appellant has not

[20] A commission ordinarily consists of seven members, including "[t]wo appointed by the board of supervisors from their own membership," "[t]wo selected by the cities in the county, each of whom shall be a mayor or council member," "[t]wo presiding officers or members of legislative bodies of independent special districts," and "[o]ne representing the general public appointed by the other members of the commission." (§ 56325.)

established based on the record and its cited authorities that any commissioner, LAFCO's Executive Officer, or its legal counsel acted under a disqualifying conflict of interest.

D. *Time For Adoption of Resolution*

Appellant asserts that LAFCO violated the law "when it failed to prepare a timely resolution confirming [its] disapproval following the September 22, 2009 [hearing] in accordance with Section 56880 . . . ." Section 56880 provides in pertinent part: "At any time not later than 35 days after the conclusion of the hearing, the commission shall adopt a resolution making determinations approving or disapproving the proposal, with or without conditions . . . ."

The Act *expressly* makes the statutory times for action by an official or a commission directory rather than mandatory with specified exceptions that do not include the time for adoption of a resolution pursuant to section 56880.[21] (§ 56106.) Generally speaking, "a ' "directory" or "mandatory" designation does not refer to whether a particular statutory requirement is "permissive" or "obligatory," but instead simply denotes whether the failure to comply with a particular procedural step will or will not have the effect of invalidating the governmental action to which the procedural requirement relates.' [Citation.] If the action is invalidated, the requirement will be termed 'mandatory.' If not, it is 'directory' only." (*California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1145.)

"Courts determine whether an obligatory statutory provision should be given mandatory or directory effect by ascertaining the legislative intent. [Citations.]" (*City of Santa Monica v. Gonzalez* (2008) 43 Cal.4th 905, 924.) In this case, the Legislature explicitly stated its intent in the Act and section 56880 is clearly a directory provision.

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[21] Section 56106 provides: "Any provisions in this division governing the time within which an official or the commission is to act shall in all instances, except for notice requirements and the requirements of subdivision (i) of Section 56658 and subdivision (b) of Section 56895, be deemed directory, rather than mandatory."

Therefore, LAFCO's failure to adopt a resolution within the time specified is not a procedural error that invalidates the action.

E. *Procedural Due Process*

Appellant claims that the alleged procedural violations cumulatively violated its due process rights to a fair hearing. "There is no constitutional requirement for any hearing in a quasi-legislative proceeding; hence, the procedural requirements for conduct of the agency's hearings stem from the particular statute rather than the constitutional demands of procedural due process." (*Rivera v. Division of Industrial Welfare* (1968) 265 Cal.App.2d 576, 587, fn. omitted.) *Cohan v. City of Thousand Oaks* (1994) 30 Cal.App.4th 547, a case repeatedly cited by appellant, involved quasi-judicial decisions regarding proposed subdivision map and development applications rather than quasi-legislative action. (See *Horn v. County of Ventura*, *supra*, 24 Cal.3d at p. 614; *City of Fairfield v. Superior Court* (1975) 14 Cal.3d 768, 773, fn. 1.)

We have not found any procedural errors affecting appellant's substantive rights, much less multiple procedural errors cumulatively affecting those rights. (§ 56107.)

DISPOSITION

The judgment is affirmed. Appellant shall bear costs of appeal.

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ELIA, J.

WE CONCUR:

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RUSHING, P. J.

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PREMO, J.